

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**FAO NO. 2837 OF 2001 (O&M)
DECIDED ON : 22.07.2015**

Om Prakash through LRs

...Appellant

versus

Ravinder Kumar and others

...Respondents

CORAM : HON'BLE MR. JUSTICE K.C .PURI

Present : Mr. Kulvir Narwal, Advocate,
for the appellant.

Mr. Suvir Dewan, Advocate,
for respondent no.4.

K. C. PURI, J.

This is an appeal directed by Om Prakash-original owner of the offending vehicle bearing registration No. HR-19-7917 against the Award dated 01.06.2001 passed by Shri R. S. Madan, Motor Accident Claims Tribunal, Rohta, vide which the claim petition preferred by the claimants, was accepted with costs.

The relevant facts of the case are that on 01.08.1999 at about 10/11 AM, Ravinder Kumar was going on his motorcycle bearing registration No. HR-32-2276 from village Mandothi to Rohtak to attend his college. He was driving his motorcycle at a very moderate speed and on the left side of the road. When he reached near village

Sampla, one jeep bearing registration No. HR-19-7917 came from the opposite side (Rohtak side) in a zig-zag manner and at a very high speed. The claimant, on seeing the jeep coming on high speed, brought his motorcycle on the kaccha berm of the road but in spite of that, Sumer Singh-driver of the jeep while trying to overtake a truck going ahead of him, brought his jeep on the wrong side of the road and hit the motorcycle of the claimant. Due to the impact, the injured/claimant received multiple injuries and fracture on his left leg and ankle. He was taken to PGIMS, Rohtak. FIR No.212 dated 04.08.1999 under Sections 279/337 of the Indian Penal Code was also registered against Sumer Singh.

Initially, respondents No.1 and 2 before the Tribunal, were represented by Shri H.P. Bansal, Advocate. However, thereafter, none appeared on behalf of respondent No.1 and as such, he was proceeded ex parte.

Respondent No.2 filed written statement taking preliminary objections that the claim petition is bad for mis-joinder and non-joinder of necessary parties because Rajbir Singh was not the registered owner of the offending vehicle as he has sold the offending vehicle to one Om Prakash on 24.04.1998.

Respondent No.3-Insurance Company filed separate written statement taking preliminary objections of having no locus standi to file the claim petition. It was further pleaded that driver of the offending vehicle was not holding a valid driving license. In the alternative, the license hold by the driver was fake.

Om Prakash was arrayed as party by way of amendment and he also filed written statement admitting the factum of ownership. However, the factum of accident was denied. It was further admitted that Rajbir Singh has sold the jeep in question to him. The other averments of the claim petition were denied.

From the pleadings of parties, following issues were framed :-

- 1) Whether the present accident is the out come of rash and negligent driving of respondent No.1 Sumer Singh, while driving vehicle bearing No. HR-19/7917 on 01.08.1999, around 10.00/11.00 AM in the area of Sampla, in which petitioner received injuries ? OPP
- 2) If Issue No.1 is proved in affirmative, to what amount and from whom the petitioner is entitled to recover ? OPP
- 3) Whether respondent No.1 was holding a valid driving license on the date of alleged accident ? OPR
- 4) Relief.

In order to prove his case, injured Ravinder Kumar himself stepped into the witness box as PW-1 and closed his evidence after tendering certain documents.

On the other hand, the respondents examined

Sewa Singh as RW-1, Clerk, RTA Office, Rohtak, Ashok Kumar, Motor

Vehicle Inspector, Rohtak as RW-2, Chand Singh, Licensing Clerk as RW-3, Rajbir Singh-respondent as RW-4 and closed the evidence.

The learned Tribunal, after adjudication, returned the findings on Issues No.1 and 2 in favour of the claimants. However, Issue No.3 was decided in favour of the Insurance Company and recovery rights were given to the Insurance Company.

Feeling dissatisfied with the above said findings given on Issue No.3 in the Award dated 01.06.2001 passed by Shri R.S.Madan, Motor Accident Claims Tribunal, Rohtak, Om Prakash has preferred the instant appeal.

Learned counsel for the appellant has submitted that findings on Issue NO.3 have been returned in favour of the Insurance Company on two grounds : i) the owner has not informed the Insurance Company regarding transfer of the vehicle ii) Sumer Singh-driver was holding a driving license for driving motorcycle and car only and he was not authorised to drive the jeep. Learned counsel for the appellant has further submitted that both these grounds are not available with the Insurance Company and the Tribunal has wrongly decided Issue No.3 in favour of the Insurance Company.

Learned counsel for the appellant has further submitted that mechanism of jeep and car is same and as such, it cannot be said that there is violation of the terms and conditions of the insurance policy. To support this contention, he has relied upon authority "**Hardayan Singh vs. Chiranji Lal**" 2002 (3) RCR (Civil)

656.

Learned counsel for Insurance Company has conceded the legal position and has admitted that the owner cannot be held liable to pay the amount of compensation on account of the fact that the driver of the said vehicle was holding a driving license for the car and not for the jeep.

It is not out of place to mention here that mechanism of car and jeep is same. This court in ***Hardayan Singh's case (supra)*** has held that a person holding driving license for scooter/motorcycle/car/jeep can drive a tempo also which is a Light Motor Vehicle. In these circumstances, it cannot be said that there is violation of terms and conditions of the insurance policy as the driver of the offending vehicle was holding a valid driving license.

The other finding returned by the Tribunal that in view of Section 157 of the Motor Vehicles Act, if intimation of the transfer of ownership of vehicle is not sent to the Insurance Company, the company is not liable to pay the amount of compensation, has been pressed by the Insurance Company. However, learned counsel for the appellant has submitted that this court in ***FAO No. 2646 of 1998 decided on 16.02.2015*** titled as, ***"Naresh Kumar and another vs Manoj Kumar and others"*** has held that Insurance Company cannot avoid its liability on the ground that intimation of transfer of the ownership has not been given to the company. It is further submitted that ***Madras High Court in CMA(MD) No.1264 of 2006 decided on 01.04.2015*** titled as, ***"National Insurance Company vs N. Ponnann"*** has held that Insurance Company cannot avoid its liability on the ground that original owner has not intimated the company

regarding the transfer of ownership.

Learned counsel for the appellant has also relied upon Single Bench authorities of this court titled as "**Lakhu Singh and another vs. Uday Singh and others**" 2007 (4) PLR 507; "**United India Insurance Company Limited vs Smt. Hargian Devi and others**" 2007 (1) PLR 598, Division Bench authority of this Court titled as "**United India Insurance Company Limited vs Sharanjit Kaur and others**" 2005 (1) PLR 34 and Hon'ble Apex Court authority titled as, "**G.Govindan vs New India Assurance Company Limited and others**" 1999 (3) SCC 754 (SC).

I have considered the submissions made by both the sides and have gone through the records of case.

In **G.Govindan's case (supra)**, the Hon'ble Apex Court, while dealing with Section 103-A of the Motor Vehicles Act, 1939 which correspond to Section 157 of the Motor Vehicles Act, 1988, has held that so far as third party risk is concerned, the Insurance Company is liable to pay the amount of compensation even in case change of owner has not been intimated to the insurance company.

The Division Bench of this Court in **United India Insurance Company Limited's case (supra)**, while dealing with Section 157 (1) has held that when a vehicle is transferred by the owner, the policy is also deemed to have been transferred as it is the vehicle which is insured with the company not the owner. Similar view was taken by this Court in **Lakhu Singh and anothers' case (supra)**; **Hardayan Singh's case (supra)**, **Naresh Kumar and anothers' case (supra)** and in **National Insurance Company**

Limited's case (*supra*) by Madras High Court.

Again the Division Bench of this court in *United India Insurance Company Limited vs. Manjit Kaur and others*" 2000 (3) PLR 102 has held that when the vehicle is sold, the policy is deemed to have been transferred. The failure to make application to the insurance company for transfer would not nullify the deemed transfer. This finding has been given while dealing with Section 157 (1)(2) of the Motor Vehicles Act, 1988.

The three Judges Bench authority of Hon'ble Apex Court titled as **"*Rikhi Ram and another vs Sukhrania and others*" 2003 (1) RCR (Civil) 756**, has also held that insurer cannot avoid its liability merely because the transfer of the vehicle was not notified to it. The insured vehicle can be used by any person with the permission of insured. Even the transferee is a third party for that purpose except that he cannot claim personal damage to the vehicle from the insurer because that part of insurance is not compulsory and remains personal to the person insured.

So, in view of the authoritative law discussed above by the Hon'ble Apex Court as well as this Court and the Madras High Court, I have no hesitation in holding that the Insurance Company cannot absolve its liability to pay the amount of compensation on account of transfer of the vehicle by Rajbir Singh to Om Prakash-present appellant.

In view of the above discussion, the appeal stands accepted. The findings returned by the Tribunal on Issue No.3 stands reversed and Issue No.3 stands decided against the Insurance

Company. The appellant-Om Prakash(original owner of the offending vehicle), Sumer Singh-driver of the offending vehicle and the Insurance Company are jointly and severally held liable to pay the amount of compensation. The primary liability to pay the amount of compensation is held that of Insurance Company.

During the course of arguments, learned counsel for the appellant has submitted that the appellant has paid the amount of compensation to the claimants. So, the appellant shall be entitled to recover the same from the Insurance Company along with interest @ 7.5% per annum from the date of payment made to the claimants till its realisation from the Insurance Company.

JULY 22, 2015
shalini

(K. C. PURI)
JUDGE